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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,637	06/19/2006	Max Wyssmann	699/44979	8639
23646 7590 10/01/2008 BARNES & THORNBURG LLP 750-17TH STREET NW SUITE 900 WASHINGTON, DC 20006-4675				
EXAMINER DOUKAS, MARIA E				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,637

Applicant(s)

WYSSMANN, MAX

Examiner

MARIA E. DOUKAS

Art Unit

4166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CIS-100)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 6/21/2006

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 recites the limitation "the breaking points" in line 1. There is insufficient antecedent basis for this limitation in the claim. 'Breaking points' are referenced in claim 11, but claim 12 is dependent on claim 9 which has no prior mention of 'breaking points.' For the rejection of claim 12 below, examiner interpreted 'the breaking points' in claim 12 to be those referenced in claim 11.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-10, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,741,275 to Wyssmann (Wyssmann) in view of U.S. Patent Application Publication No. 2005/0037165 to Ahern (Ahern) and U.S. Patent No. 6,312,641 to Hutchinson (Hutchinson).

In Reference to Claims 1-3

Wyssmann teaches a device (Figure 4) for the targeted, controllable delivery or drawing of a liquid or viscous substance (col. 2, lines 37-40), comprising: a reservoir (container 1) having a piston (piston 6) dividing the reservoir into a storage chamber (mass chamber 5) for the viscous substance and a pressure chamber (gas chamber 4) for gas; the storage chamber for the viscous substance leading into a discharge opening (Figure 4) in the reservoir for the viscous substances; an insert (clamping device 12) in the pressure chamber which insert contains at least one gas generating cell (gas evolution cell 8) and a circuit (load resistor 9) for the running-time control.

Wyssmann fails to teach wherein the wall of the reservoir is constructed in several layers, at least two of the layers consisting of different chemical substances, at least one of the layers which form the wall of the reservoir having a lower diffusion coefficient for the gas to be generated by the gas generating cell than the other layer(s), and the wall of the reservoir consisting of one of transparent and translucent layers.

Ahern teaches a container composed of a multi-layer wall 14a (Figure 5) with an inner skin layer 56, a solid core layer 52, and an outer skin layer 54. The inner and outer skin layers are of a different material than the core layer (page 2, paragraph [0025]), and the core layer can be chosen of a material with a lower diffusion coefficient for the gas than the outer and inner skin layers (page 3, paragraph [0032], whereby the core layer being EVOH provides a gas barrier that will have a lower diffusion coefficient for the gas than the skin layers composed of a liquid vapor barrier material). Ahern teaches the multi-layer wall in order to inhibit the passage of gases through the polymer

wall (page 1, paragraph [0023]). Hutchinson teaches a container with a multilayer wall that is completely transparent in order to enable the contents of the container to be viewed by the user (col. 1, lines 18-21).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the container 1 of Wyssmann to have a multi-layered wall composed of an inner skin layer, an outer skin layer, and a solid core layer, with the core layer being a different material with a lower gas diffusion coefficient in order to inhibit the passage of gases through the container wall, as explicitly taught by Ahern. Since the container of Hutchinson can be made of the same materials as Ahern (e.g. polyethylene terephthalate) it would have also been obvious to one having ordinary skill in the art at the time of the invention to have made each layer of the multi-layer wall transparent in order to enable the contents of the container to be viewed by the user, as explicitly taught by Hutchinson.

In Reference to Claim 5

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 2 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 2 above). Ahern teaches the outer and inner skin layers can be selected from a group that includes polyethylene terephthalate (PET) (page 2, paragraph [0026]).

In Reference to Claims 6-7

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 2 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 2 above). Ahern teaches the core layer can be selected from a group that includes polyamides and EVOH (page 2, paragraph [0026]).

In Reference to Claims 8-10

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 2 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 2 above). Ahern teaches the core layer can range from 0.1-20 mils thick and the skin layers can range from 8-40 mils thick, thereby enabling the core layer to have a thickness within the claimed ranges (30-60% or 40-50% of the entire wall thickness) or the claimed thickness of 45% of the entire wall depending on what thickness dimensions are chosen for each layer (See MPEP §2144.05).

In Reference to Claim 13

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 1 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 2 above). Ahern teaches the outer and inner skin layers can be selected from a group that includes polyethylene terephthalate (PET) (page 2, paragraph [0026]).

In Reference to Claim 14-15

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 13 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 13 above). Ahern teaches the core layer can be selected from a group that includes polyamides and EVOH (page 2, paragraph [0026]).

In Reference to Claims 16-17

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 1 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 1 above). Ahern teaches the core layer can be selected from a group that includes polyamides and EVOH (page 2, paragraph [0026]).

In Reference to Claims 18-20

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 1 with the multi-layered wall of the container being transparent and having an inner and outer skin layer and a core layer (see rejection of claim 1 above). Ahern teaches the core layer can range from 0.1-20 mils thick and the skin layers can range from 8-40 mils thick, thereby enabling the core layer to have a thickness within the claimed ranges (30-60% or 40-50% of the entire wall thickness) or the claimed thickness of 45% of the

entire wall depending on what thickness dimensions are chosen for each layer (See MPEP §2144.05).

5. Claims 4 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyssmann in view of Ahern and Hutchinson and U.S. Patent No. 5,363,890 to Yeung (Yeung).

In Reference to Claim 4

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 1 (see rejection of claim 1 above) but fails to teach a closing device that can be detached and is molded to the discharge opening. Yeung teaches a membrane closure 70 that contains a skirt 80 and support ring 74 that provides a closing device for a bottle (Figures 11-12) in order to provide a water tight seal at the bottle opening that can be opened to allow fluid flow from the bottle (col. 2, lines 4-8).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have added the membrane closure with support ring to the discharge opening of the container 1 of Wyssmann in order to provide a water tight seal at the opening that can be opened to allow fluid flow from the container, as explicitly taught by Yeung.

In Reference to Claim 11

Wyssmann in view of Ahern, Hutchinson, and Yeung teaches the device of claim 4 (see rejection of claim 4 above). Yeung further teaches wherein the closing device has breaking points (notches 78).

In Reference to Claim 12

Wyssmann in view of Ahern and Hutchinson teaches the device of claim 9 (see rejection of claim 9 above) but fails to teach a closing device that can be detached and is molded to the discharge opening and that has breaking points that are notches. Yeung teaches a membrane closure 70 that contains a skirt 80 and support ring 74 with notches 78 that provides a closing device for a bottle (Figures 11-12) in order to provide a water tight seal at the bottle opening that can be opened to allow fluid flow from the bottle (col. 2, lines 4-8).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have added the membrane closure with support ring and notches to the discharge opening of the container 1 of Wyssmann in order to provide a water tight seal at the opening that can be opened to allow fluid flow from the container, as explicitly taught by Yeung.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,464,106 (Slat) teaches a multi-layer container

with layers made of PET or EVOH. U.S. Patent No. 5,902,598 (Chen) teaches a multi-layer device with different layers having different permeabilities.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA E. DOUKAS whose telephone number is (571)270-5901. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on (571)272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD

/Kenneth Bomberg/
Supervisory Patent Examiner, Art Unit 4166